UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/304/Add.21
23 April 1997

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fiftieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the
Elimination of Racial Discrimination

Guatemala

1. The Committee considered the seventh periodic report of Guatemala (CERD/C/292/Add.1) at its 1190th and 1191st meetings (CERD/C/SR.1190 and 1191), held on 5 and 6 March 1997. At its 1210th meeting, held on 19 March 1997, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the opportunity to engage in a frank and fruitful dialogue with the Government of Guatemala. The Committee expresses its appreciation of the continuous dialogue with Guatemala during this time of important changes and developments in the State party.

3. The Committee expresses its appreciation for the important information provided in the report and by the delegation in the oral presentation. This information, including recent developments in the State party, enabled the Committee to obtain a better and more up-to-date picture of the situation. Nevertheless, the Committee regrets that the report did not contain sufficient information on the actual practice in the State party with respect to the implementation of the Convention and did not take sufficient account of the concluding observations of the Committee with respect to the previous report (A/50/18, paras. 298-319).

4. The Committee noted that the State party has not made the declaration provided for in article 14 of the Convention, and some of its members requested that the possibility of making such declaration be considered.

B. Factors or difficulties impeding the implementation of the Convention

5. It is recognized that much needs to be done to overcome the effects of the long-lasting conflict in the State party. Efforts towards the full enforcement of the principles and provisions enshrined in the Convention have been hampered by the difficult circumstances in the country after decades of unrest and civil war. It is acknowledged that the changes need to go beyond disarmament and that attitudes and values related to the culture of violence have to be changed in order to achieve peace. It is noted that the exercise of racial discrimination, especially against indigenous populations, is still prevalent in some parts of the society.

C. Positive aspects

6. It is noted with satisfaction that despite severe economic and social difficulties considerable efforts are being made to implement the provisions of the Convention.

7. It is appreciated, in particular, that important legal developments have been achieved recently. A major achievement in this respect has been the Agreement on Identity and Rights of Indigenous Peoples and the Agreement for the Resettlement of Uprooted Populations, which were signed in the process of concluding the peace agreements. Furthermore, it is noted with satisfaction that following the Committee's recommendation, ILO Convention No. 169 concerning Indigenous and Tribal Populations in Independent Countries was ratified by the State party in 1996. It is also noted with appreciation that, under the Constitution of the State party, international obligations including the International Convention on the Elimination of All Forms of Racial Discrimination prevail over national law. In addition, steps taken to revise the Penal Code to include the prohibition of racial discrimination and to introduce legislation on land rights and the protection of indigenous identity are welcomed.

8. It is noted with appreciation that the military commissions and the civil defence volunteer committees have been dissolved.

9. It is noted with satisfaction that various bodies are being established in order to facilitate racial reconciliation and to promote democratic society based on the principle of equality. It is welcomed in particular that a Joint Commission has been established, and that it consists of members of both the indigenous and non-indigenous populations. The establishment of the Commission on Historic Clarification (Truth Commission) in order to investigate killings and disappearances during the armed conflict is also welcomed. In this context, it is noted with appreciation that the delegation of Guatemala assured the Committee that military files would be made available to the Truth Commission. It is also noted with satisfaction that a secretariat of indigenous peoples in the public prosecutor's office and a commission on homeless children have been set up.

10. It is noted with satisfaction that the number of complaints on the grounds of human rights violations has decreased.

11. It is noted with appreciation that a large number of people, mainly indigenous, who had fled their lands and the country during the time of armed conflict have returned to the territory of the State party and that the State party has established a fund to assist the returnees in the process of resettlement.

12. The Committee welcomes the stated intent of the delegation of the Government of Guatemala to include a member of the indigenous population in its delegation during the presentation of its next periodic report.

D. Principal subjects of concern

13. Concern is expressed at the climate of violence and intimidation which still exists in the State party and that the detrimental effects of this climate are mostly borne by the indigenous population. This seriously jeopardizes the conditions of security of persons as referred to in article 5 (b) of the Convention.

14. Concern is expressed that the recommendations of the Committee concerning the implementation of article 5 of the Convention have not yet been fulfilled by the State party; concern is also expressed that the Committee's recommendation that the State party provide detailed information on the implementation of the provisions of the Convention has not been fully complied with.

15. Concern is expressed at the lack of legislation aimed at eliminating racial discrimination as required by article 2 of the Convention.

16. Concern is equally expressed at the lack of legislation prohibiting incitement to racial discrimination as required by article 4 of the Convention.

17. Concern is expressed that the indigenous population does not enjoy effective protection and remedies in the national courts from violations of human rights and fundamental freedoms owing to the lack of interpreters and the insufficient availability of public legal defenders.

18. Concern is expressed that officials of the State party continue to enjoy impunity from criminal prosecution for abusing and violating the human rights of poor people, especially indigenous people and women. This has led people to take the law into their own hands and has resulted in a significant number of lynchings. This situation reflects the despair and lack of confidence of the population in the effective exercise of justice.

19. Concern is expressed at the situation of land rights in the State party. Despite the Government's efforts, the problem of allocation of land and/or compensation continues, especially with respect to the return of lands to the indigenous peoples after the end of the armed conflict. Of special concern are confrontations arising over the ownership of property, in the course of which indigenous peoples have been detained and threatened.

20. It is noted with concern that the previous recommendation of the Committee concerning the training of law enforcement officials in the light of the Committee's General Recommendation XIII has not been implemented.

21. It is noted with concern that adequate and proportionate participation of the indigenous population in Parliament, in the public service and in public life at the national level has not been achieved; in particular, members of indigenous communities are under-represented among judges and in the administration of justice.

22. Concern is expressed that the widespread dissemination of the periodic report of the State party, as well as the concluding observations of the Committee in the respective languages of the population, has not been fully achieved.

23. Although efforts have been made to promote affirmative measures in the fields of education and training and to provide bilingual education for the entire population, the situation is not yet satisfactory.

E. Suggestions and recommendations

24. The Committee recommends that the State party continue and strengthen efforts to change the climate of violence and to support rapid disarmament.

25. The Committee reiterates its recommendation that the State party fully implement the Convention, particularly its articles 4, 5 and 6, and provide information on its application. It is further suggested that the State party furnish detailed information on the effectiveness of newly adopted laws and newly created bodies on ethnic relations. It is also requested that the State party include in its next report information on complaints received and judgements issued concerning racial discrimination.

26. The Committee recommends that the State party continue the process of incorporating the prohibition of racial discrimination in national legislation, and the adoption of laws to implement the agreement on the identity and rights of indigenous peoples.

27. The Committee recommends that the State party take steps to ensure the effective implementation of new laws and provide for access to the judiciary by all members of the population, in particular by furnishing adequate interpretation services for indigenous people at all levels of judicial proceedings. The Committee reiterates its previous recommendation that the training of law enforcement officials should be improved in the light of the Committee's General Recommendation XIII.

28. The Committee recommends that the authorities of Guatemala take effective measures to end the impunity of State officials who act illegally and to guarantee the availability of remedies and due process for all members of the population.

29. The Committee recommends that efforts should be continued to ensure the full participation of all citizens in public life, in particular in elections, after having been adequately informed in the respective languages spoken in the State party.

30. The Committee recommends that the State party take measures to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population, including those persons returning to the territory after the end of the armed conflict.

31. The Committee stresses the importance that land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership. It is suggested that the State party use the provisions of ILO Convention No. 169 as a guideline for resolving land distribution issues and to consider, in the light of that Convention, the question of compensation for properties that cannot be restituted.

32. The Committee suggests that efforts be increased to promote affirmative measures in the fields of education and training and to introduce bilingual education for all parts of the population.

33. The Committee suggests that the State party consider the establishment of a national commission to undertake specific activities in response to recommendations and suggestions made by the Committee.

34. The Committee suggests that widespread publicity be given to the Convention, the periodic reports submitted by the State party and the concluding observations of the Committee, in major languages of the population.

35. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted at the fourteenth meeting of States parties.

36. The Committee recalls with appreciation the State party's invitation to have one of its members come to Guatemala to assist the State party in the implementation of the Convention.

37. The Committee recommends that the State party's next periodic report be a comprehensive report and that it provide replies to the questions raised during the consideration of the report.